

NEW APPLICATION

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

LEA MÁRQUEZ PETERSON - Chairwoman
SANDRA D. KENNEDY
JUSTIN OLSON
ANNA TOVAR
JIM O'CONNOR

In the matter of:

WENIMA DEVELOPMENT, L.L.C., an
Arizona limited liability company,

I AM AMERICA, an Arizona sole
proprietorship,

LENARD TOYE and LORI A. TOYE,
husband and wife,

Respondents.

) DOCKET NO. S-21174A-21-0404

)
) **NOTICE OF OPPORTUNITY FOR HEARING**
) **REGARDING PROPOSED ORDER TO CEASE**
) **AND DESIST, ORDER FOR RESTITUTION,**
) **ORDER FOR ADMINISTRATIVE**
) **PENALTIES, AND ORDER FOR OTHER**
) **AFFIRMATIVE ACTION**

NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING
EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents Wenima Development, L.L.C. ("Wenima"), I AM America ("IAA"), Lenard Toye, and Lori Toye have engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

The Division also alleges that Lenard Toye and Lori Toye are persons controlling Wenima and IAA within the meaning of A.R.S. § 44-1999(B), so that they are jointly and severally liable under A.R.S. § 44-1999(B) to the same extent as these entities for their violations of the antifraud provisions of the Securities Act.

Respondents formed Wenima as a real estate development company, though Wenima's principals' main business was selling psychic services. Wenima never made any revenue from real estate development. Instead, it relied largely on investor funds. In 2015, after purchasing land near Springerville, Arizona and litigating title issues related to that land, Wenima ceased any

1 meaningful attempt to work on real estate development. Notwithstanding, it continued to solicit
2 investors—including a disabled, elderly man—and used the investor funds almost entirely on
3 personal expenses of Wenima’s principals, Lenard and Lori Toye.

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5 **I.**

6 **JURISDICTION**

7 1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona
8 Constitution and the Securities Act.

9 **II.**

10 **RESPONDENTS**

11 2. Wenima Development, L.L.C. is a member-managed limited liability company formed
12 in Arizona on July 27, 2001. Its business address is in Payson, Arizona. In its articles of organization,
13 Wenima lists Lenard Toye and Lori Toye as its two members. In its operating agreement, Wenima
14 designates Lenard Toye and Lori Toye as its managers (even though management remains vested in the
15 members in the company’s articles) and empowers the managers with exclusive authority over the
16 company’s business and affairs.

17 3. IAA is a sole proprietorship located in Payson, Arizona. Both Lenard and Lori Toye are
18 agents for IAA.

19 4. Lenard Toye and Lori Toye are a married couple who reside in Payson, Arizona.

20 5. Wenima, IAA, Lenard Toye, and Lori Toye may be referred to collectively as
21 “Respondents.”

22 6. Respondents Lenard Toye and Lori Toye were married at all relevant times. At all
23 relevant times, Lenard Toye and Lori Toye were acting for their own benefit and on behalf of and for
24 the benefit of the marital community. Each of them is joined to this action for their own violations and
25 under A.R.S. §44-2031(C). Violations for both Lenard Toye and Lori Toye create an obligation of the
26 marital community.

III.**FACTS**

7. As early as 1992, Respondent Lori Toye was in the business of providing psychic services, sold through Respondent IAA. These services included selling maps with revelations that she had received from St. Jerome and other “ascended masters.”

8. IAA’s website included a link with information about investing in a land development in eastern Arizona and called Lenard Toye a “master land developer.” From this link, persons could contact Respondents about investing.

9. At least one of Wenima’s investors, then a Mesa, Arizona resident who was a client for Lori Toye’s psychic services, learned of the opportunity to invest in Wenima’s land development from the solicitation on IAA’s website.

10. Wenima was formed for this land development. Wenima would acquire and develop an approximately 300-acre parcel near Springerville, Arizona. The development would include over 400 residential parcels and a golf course. Respondents told some investors that the development would have its own water and energy.

11. Wenima sold membership interests to fund the land development and provided a subscription agreement for the sale of these interests to at least two investors. The subscription agreement stated that Wenima was offering 3,400 membership interests at \$1,000 per interest. The purpose of the capital raise was to acquire land in Apache County, Arizona.

12. Respondents purchased property near Springerville, Arizona around 2003, and then spent several years in legal disputes over title issues. These disputes were resolved in 2013.

13. Funds for both the land purchase and the litigation came in large part from outside investors who bought stock or membership interests in Wenima with the promise of earning a return based on Respondents’ efforts to purchase, develop and sell residential lots.

14. From early 2003 through late 2015, Respondents offered and sold investments to at least three persons for a total of at least \$458,000.

1 15. By the end of 2015, Wenima had ceased any meaningful business activity related to
2 land development or otherwise. It did not, however, cease soliciting investors and raising money.

3 16. From September 2017 through June 2019, Respondents sold stock and investment
4 contracts totaling at least \$72,000 to an Arizona investor. The investor was an elderly man with signs
5 of dementia. The investor signed a subscription agreement to purchase \$50,000 of Wenima
6 membership interests that would entitle him to a pro rata share of distributions from the company's
7 net cash flow. The subscription agreement did not contain any provisions for additional investments
8 above the \$50,000 or any explanation as to why Respondents continued soliciting payments from the
9 investor over a nearly two-year span. Additionally, the subscription agreement states that Wenima
10 was to terminate offering investments by January 31, 2012. Several paragraphs later, it states that the
11 offering will terminate by January 31, 2010. There is no explanation for the continual solicitation of
12 the Arizona investor after these dates.

13 17. The subscription agreement also did not contain any disclosure of the failed past
14 performance of the company, the lack of current operations, or financial information. Even if
15 Respondents had made such disclosures, the investor was elderly and had been diagnosed with
16 dementia prior to investing. Thus, such basic, requisite disclosures would be insufficient to undue
17 exploitation of the investor.

18 18. The subscription agreement given to the investor says that the company's purpose is
19 to acquire and develop specific property. The operating agreement given to the investor says that
20 "Funds deposited into [Wenima's] bank accounts shall be used only for the business of the company."
21 Despite these representations, Respondents' use of the investor's funds from September 2017 through
22 2019 are not consistent with construction or development of a residential property. Instead,
23 Respondents—who did not have any revenue from real estate development at this time—used the
24 investor's funds to dine in restaurants, pay for their residence, make car payments, and make other
25 expenditures consistent with personal use.
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19. Ultimately, all investors have lost all their funds and the project remains simply a plot of land with no development.

IV.

VIOLATION OF A.R.S. § 44-1841

(Offer or Sale of Unregistered Securities)

20. From early 2002 and continuing into late 2019, Respondents offered or sold securities in the form of stock and investment contracts, within or from Arizona.

21. The securities referred to above were not registered pursuant to Articles 6 or 7 of the Securities Act.

22. This conduct violates A.R.S. § 44-1841.

V.

VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

23. Respondents offered or sold securities within or from Arizona while not registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

24. This conduct violates A.R.S. § 44-1842.

VI.

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

25. In connection with the offer or sale of securities within or from Arizona, Respondents directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts that were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; or (iii) engaged in transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon offerees and investors. Respondents' conduct includes, but is not limited to, the following:

1 a) Selling investments without adequately disclosing risks and failing to provide
2 information that would allow a reasonable investor to assess Respondents' ability to generate a profit,
3 including a past history of failing to timely develop land as represented to previous investors and a recent
4 history of having no business operations;

5 b) Exploiting an elderly person with limited capacity by frequently soliciting
6 investments and taking investment proceeds totaling at least \$72,000 from this person, then spending
7 those proceeds on dining, rent, car payments and other expenses consistent with personal expenditures
8 while spending nothing or nearly nothing on operating the business he invested in; and

9 c) Describing Wenima's business activity as real estate development, representing
10 that funds would only be used for company business, then using investor funds on dining, rent, car
11 payments and other expenses consistent with personal expenditures while spending nothing or nearly
12 nothing on real estate development.

13 26. This conduct violates A.R.S. § 44-1991.

14 **VII.**

15 **CONTROL PERSON LIABILITY PURSUANT TO A.R.S. § 44-1999**

16 27. From at least July 2001 through at least 2020, Lenard and Lori Toye directly or
17 indirectly controlled Wenima within the meaning of A.R.S. § 44-1999. Therefore, they are jointly
18 and severally liable to the same extent as Wenima for its violations of A.R.S. § 44-1991.

19 **VIII.**

20 **REQUESTED RELIEF**

21 The Division requests that the Commission grant the following relief:

22 1. Order Respondents to permanently cease and desist from violating the Securities Act,
23 pursuant to A.R.S. § 44-2032;
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2. Order Respondents to take affirmative action to correct the conditions resulting from Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;

3. Order Respondents to pay the state of Arizona administrative penalties of up to \$5,000 for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

4. Order that Respondents Lenard and Lori Toye and their marital community be subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action.

5. Order any other relief that the Commission deems appropriate.

IX.

HEARING OPPORTUNITY

Each respondent, including respondent spouses, may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. **If a Respondent or a respondent spouse requests a hearing, the requesting respondent must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. The requesting respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's website at <http://www.azcc.gov/hearing>.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission may, without a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Carolyn D. Buck,

1 ADA Coordinator, voice phone number (602) 542-3931, e-mail cdbuck@azcc.gov. Requests should
2 be made as early as possible to allow time to arrange the accommodation. Additional information
3 about the administrative action procedure may be found at
4 <http://www.azcc.gov/securities/enforcement/procedure>.

5 **X.**

6 **ANSWER REQUIREMENT**

7 Pursuant to A.A.C. R14-4-305, if a Respondent or a respondent spouse requests a hearing,
8 the requesting respondent must deliver or mail an answer to this Notice of Opportunity for Hearing
9 to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona
10 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be
11 obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site
12 at <http://www.azcc.gov/hearing>.

13 Additionally, the answering respondent must serve the answer upon the Division. Pursuant to
14 A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a copy
15 of the answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007,
16 addressed to Ryan Millecam.

17 The answer shall contain an admission or denial of each allegation in this Notice and the
18 original signature of the answering respondent or respondent's attorney. A statement of a lack of
19 sufficient knowledge or information shall be considered a denial of an allegation. An allegation not
20 denied shall be considered admitted.

21 When the answering respondent intends in good faith to deny only a part or a qualification of
22 an allegation, the respondent shall specify that part or qualification of the allegation and shall admit
23 the remainder. Respondents waive any affirmative defense not raised in the answer.

24 The officer presiding over the hearing may grant relief from the requirement to file an answer
25 for good cause shown.

1 Dated this 22nd day of December 2021.

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4 Wendy Coy
5 Assistant Director of Securities
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